

LAWRENCE C. FARLEY
Claimant

CENTRAL MECHANICAL CONSTRUCTION, INC.
Respondent

CIGNA WORKERS COMPENSATION
Insurance Carrier

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ORDER

APPEARANCES

RECORD AND STIPULATIONS

ISSUES

The Administrative Law Judge awarded claimant a 64.5 percent work disability for a work-related December 3, 1997, accident. Respondent appealed and contends that claimant's permanent partial general disability should be limited to an eight percent permanent impairment of function. Respondent argues claimant voluntarily left his employment with respondent and later declined accommodated employment offered by the respondent. Additionally, if the Appeals Board agrees with the Administrative Law Judge and finds claimant is entitled to a work disability, then the respondent argues the

Administrative Law Judge erred in computing the claimant's post-injury average weekly wage. A higher post-injury wage would entitle claimant to a lower work disability award.

In contrast, claimant requests that the Administrative Law Judge's 64.5 percent work disability award be affirmed. But the claimant also disagrees with the Administrative Law Judge's finding that claimant only proved an eight percent permanent impairment of function. Further, the claimant also contends the Administrative Law Judge erred in the computation of claimant's post-injury average weekly wage.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs, and hearing the parties' arguments, the Appeals Board finds the Administrative Law Judge's Award should be affirmed.

The Appeals Board finds the Administrative Law Judge's findings and conclusions set forth in the Award are accurate and supported by the record. It is not necessary to repeat those findings and conclusions in this Order. Those findings and conclusions are adopted by the Appeals Board as its own to the extent they are not inconsistent with this Order.

Specifically, the Appeals Board finds claimant was forced to quit his employment, after his work-related injury, because the respondent would not accommodate the light-work restrictions imposed by his family physician that he submitted in writing to the respondent on December 3, 1997. Furthermore, claimant should not be denied a work disability because the respondent, one year and a half after claimant left his employment with respondent, made a non-specific offer of an accommodated job through a letter to respondent's attorneys. This offer was later forwarded to claimant's attorney. Claimant's reluctance to return to respondent's employment based on that offer was reasonable because claimant had secured permanent steady employment within his permanent work restrictions in a job that offered potential advancement.¹

Additionally, the Appeals Board finds claimant's treating physician, J. Mark Melhorn, M.D., at the time he released claimant in June of 1998, determined not to place permanent work restrictions on claimant because he was unemployed at that time. But if claimant would have returned to the respondent's employment, Dr. Melhorn testified he would have restricted claimant's activities. At the time Dr. Melhorn's deposition was taken, claimant was in sedentary type employment, and Dr. Melhorn testified, because of this, there was no need for permanent restrictions.

Both claimant and respondent disagreed with the Administrative Law Judge's determination that claimant's post-injury average weekly wage was \$513.22. Respondent contends the post-injury average weekly wage should be \$568.71, and claimant contends

¹See Edwards v. Klein Tools, Inc., 25 Kan. App.2d 879, 881, 974 P.2d 609 (1999).

it should be \$507.79. The Appeals Board agrees with the claimant's wage computation. First, the respondent and the Administrative Law Judge both included, in their computation of the post-injury average weekly wage, vacation pay and sick leave pay that are not identified as additional compensation by statute.² Thus, claimant was correct in not including either amount in his computation. Second, the respondent, in arriving at the weekly amount of bonus paid to claimant, divided the total bonus amount paid by 26 weeks instead of the 52 weeks as required by statute.³ But even if the correct post-injury wage of \$507.79 is used instead of the Administrative Law Judge's \$513.22, the percentage of wage loss remains at 34 percent as found by the Administrative Law Judge and the 64.5 percent work disability does not change.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Bryce D. Benedict dated October 21, 1999, should be, and the same is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of March 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: John J. Bryan, Topeka, KS
Michelle Daum Haskins, Kansas City, MO
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director

²See K.S.A. 44-511(a)(2).

³See K.S.A. 44-511(a)(1)(2)(B).